

## IN THE UNITED STATES DISTRICT COURT

## FOR THE NORTHERN DISTRICT OF CALIFORNIA

11 MUHSIN H. LIHONY,

12 Plaintiff, No. C 12-01601 SI

13 v.

**ORDER GRANTING MOTION TO  
DISMISS**14 BANK OF AMERICA, N.A., and  
15 RECONSTRUCT COMPANY, N.A.,

16 Defendants. /

17 Plaintiff filed this case on March 30, 2012, asserting claims for declaratory relief, injunctive  
18 relief and quiet title regarding defendants' alleged attempts to foreclose on plaintiff's home at 5901  
19 Caddington Way, Sacramento, CA. Complaint, ¶18. Plaintiff asserted jurisdiction exists in this Court  
20 based on diversity of jurisdiction with respect to defendants Bank of America, N.A. and Recon Trust  
21 Company, N.A. *Id.*, ¶1. While plaintiff asserts that his home and residence is at 5901 Caddington Way,  
22 every piece of mail the clerk's office has sent to Mr. Lihony at that address has been returned to this  
23 Court as undeliverable. *See* Docket Nos. 6, 14, 25, 26, 27.

24 Defendants have moved to dismiss, arguing that diversity jurisdiction does not exist because  
25 defendant Recon Trust is a national banking association with its principal place of business in  
26 California. Defendants filed their motion to dismiss on May 2, 2012, and after the case was reassigned  
27 to the undersigned, renoted the motion to dismiss on May 18, 2012 for hearing on June 15, 2012.  
28

1 On May 21, 2012, the Court granted plaintiff's application to proceed *in forma pauperis* and  
2 informed the parties that the Court intended to transfer this case to the Eastern District of California –  
3 where the property at issue is – absent objection of the parties. On May 24, 2012, defendants filed an  
4 objection to that transfer, arguing that this Court should first determine whether jurisdiction exists over  
5 the complaint. Docket No. 23. Plaintiff has not filed an opposition to defendants' motion to dismiss,  
6 or filed a response to the Court's notice of intent to transfer. Moreover, as noted above, each piece of  
7 mail sent by the Court to Mr. Lihony has been returned as undeliverable.

8        The Court find this matter appropriate for resolution without oral argument, and hereby  
9 VACATES the hearing pursuant to Civil Local Rule 7-1(b). The Court agrees that jurisdiction should  
10 be determined prior to determining whether it makes sense to transfer this action. Having reviewed  
11 defendants' motion, and the Duran Declaration filed in support of the Motion to Dismiss for lack of  
12 jurisdiction pursuant to FRCP 12(b)(1), the Court finds that diversity jurisdiction does not exist because  
13 plaintiff and defendant Recon Trust are both citizens of California. *See* 28 U.S.C. § 1332(c)(1) (a  
14 "corporation shall be deemed to be a citizen of" [a] "state where it has its principal place of business");  
15 *see also Hertz Corp. v. Friend*, 130 S. Ct. 1181 (2010). As this Court does not have jurisdiction over  
16 plaintiff's complaint, defendant's motion to dismiss is GRANTED. This dismissal is without prejudice  
17 to plaintiff's ability to refile his claims in state court.

## IT IS SO ORDERED.

Dated: June 11, 2012

Susan Illston  
SUSAN ILLSTON  
UNITED STATES DISTRICT JUDGE